

UNITED STATES DISTRICT COURT  
for the  
District of Hawaii

MEMORANDUM RE: Compliance With Local Rule LR56.1

An EXAMPLE of a separate concise statement that conforms to the requirements of Local Rule LR56.1 (effective October 30, 1997) is attached.

Please note the following requirements:

1. The concise statement is a separate document, not a part of the motion.
2. The separate concise statement is limited to 5 (five) pages.
3. Only material facts absolutely necessary for the court to determine the limited issues of the motion should be alleged.
4. Material facts put forward by the moving party's separate concise statement are deemed admitted unless controverted by the separate concise statement of the opposing party.
5. Each referenced material fact must be adequately supported. A reference to "Deposition of Jones" is insufficient. You must include the date of the deposition and the page and line number of the transcript.
6. Pursuant to Local Rule LR7.5, all attached exhibits on all copies shall have appropriate labeled tabs.
7. Do not include argument in your separate concise statement.

All of the above points, and more, are contained in the rule.

The purpose of the rule is to narrow the issues and provide the court and parties with a statement of what is actually in dispute. Please be very specific as to what material facts are controverted and identify the specific evidence showing the dispute.

The attached example conforms to the rule and, we hope, provides some guidance in applying the rule.

LOCAL RULE LR56.1. Motions for Summary Judgment.

(a) **Motion Requirements.** A motion for summary judgment shall be accompanied by a supporting memorandum and separate concise statement detailing each material fact as to which the moving party contends:

1. That there are no genuine issues to be tried; and
2. Which are essential for the court's determination of the issue or issues presented on summary judgment (not the entire case).

(b) **Opposition Requirements.** Any party who opposes the motion shall file and serve with his or her opposing papers a separate document containing a concise statement that:

1. Accepts the facts set forth in the moving party's concise statement; or
2. Sets forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated.

(c) **Focus of the Concise Statement.** When preparing the separate concise statement, a party shall reference only the material facts which are absolutely necessary for the court to determine the limited issues presented in the motion for summary judgment (and no others) and each reference shall contain a citation to a particular affidavit, deposition, or other document which supports the party's interpretation of the material fact. Documents referenced in the concise statement shall not be filed in their entirety. Instead, the filing party shall extract and highlight only the relevant portions of each referenced document. Photocopies of extracted pages, with appropriate identification and highlighting will be adequate.

(d) **Limitation.** The concise statement shall be no longer than five (5) pages.

(e) **Format.** A separate concise statement may utilize a single space format for the presentation of the facts and evidentiary support when set out in parallel columns.

(f) **Scope of Judicial Review.** When resolving motions for summary judgment, the court shall have no independent duty to search and consider any part of the court record not otherwise referenced in the separate concise statements of the parties.

(g) **Admission of Material Facts.** For purposes of a motion for summary judgment, material facts set forth in the moving party's concise statement will be deemed admitted unless controverted by a separate concise statement of the opposing party.

(emphases added)

HELEN GILLMOR  
United States District Judge

Daniel J. Toal  
Law Clerk

revised 11/28/97

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

Lawrence Spann,	)	CIVIL NO. 95-99999 HG
	)	
	)	L.H. MORGAN CONSULTING
Plaintiff,	)	ACTUARIES, INC.'S SEPARATE AND
	)	CONCISE STATEMENT OF FACTS IN
vs.	)	SUPPORT OF DEFENDANT'S MOTION
	)	FOR SUMMARY JUDGMENT
L.H. Morgan Consulting	)	
Actuaries, Inc.,	)	Date: February 19, 1996
	)	Time: 9:00 a.m.
	)	Judge: Hon. Helen Gillmor
Defendant.	)	
_____	)	Trial: April 16, 1996

**DEFENDANT'S SEPARATE CONCISE STATEMENT OF FACTS IN  
SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule LR56.1 of the Local Rules of Practice for the United States District Court for the District of Hawaii, Defendant L.H. Morgan Consulting Actuaries, Inc. ("L.H. Morgan") hereby submits its separate concise statement of material facts in support of its Motion for Summary Judgment, which is being filed contemporaneously.

DEFENDANT'S STATEMENT OF FACTS

FACTS

EVIDENTIARY  
SUPPORT

- |  |  |
|--|--|
| 1. On December 28, 1994, plaintiff Lawrence Spann wrote to L.H. Morgan to request an employment interview.   | Defendant's Motion for Summary Judgment 1/10/96, Exh. "B" Spann Dep. p.7; Exh. "C" 12/28/94 Spann Letter p.1.                          |
| 2. Spann's cover letter and resume were reviewed by Nancy Sullivan, Director of Personnel for L.H. Morgan.   | Defendant's Motion for Summary Judgment 1/10/96, Sullivan Aff. ¶ 5.  |
| 3. From the various awards and activities listed on Spann's resume, Sullivan was aware that Spann was an African-American candidate.   | Defendant's Motion for Summary Judgment 1/10/96, Sullivan Aff. ¶ 12.   |
| 4. Shortly after receiving Spann's cover letter and resume, Sullivan contacted Spann and invited him to interview with L.H. Morgan on January 24, 1995 for a position in their Actuarial Trainee Program.  | Defendant's Motion for Summary Judgment 1/10/96, Exh. "J" Spann's Answers to Interrogatories p.5.                                      |
| 5. Although L.H. Morgan did not ordinarily reimburse entry-level candidates for their interview expenses, Sullivan offered to pay for Spann's expenses because the firm was actively recruiting African-American candidates for its Actuarial Trainee Program. | Defendant's Motion for Summary Judgment 1/10/96, Exh. "A" Spann's Resp. to Request for Admissions p.11.                                |
| 6. The percentage of African-Americans in the Actuarial Training Program at L.H. Morgan is six times higher than the national percentage of African-American actuaries.  | Defendant's Motion for Summary Judgment 1/10/96, Sullivan Aff. ¶ 13; Defendant's Motion for Summary Judgment 1/10/96, Exh. "E" pp.6-7. |
| 7. As communicated to Spann in a letter dated January 5, 1995, Spann's interview was scheduled to begin at 9:30 a.m. on January 24, 1995.  | Defendant's Motion for Summary Judgment 1/10/96, Exh. "D" 1/5/95 Sullivan Letter.  |

8. Spann was scheduled to interview with Director of Personnel Sullivan and Steven Parsons, a senior partner at the firm.

Defendant's Motion for Summary Judgment 1/10/96, Sullivan Aff. ¶ 11.

9. On January 24, 1995, Spann arrived at the L.H. Morgan offices at 9:55 a.m.

Defendant's Motion for Summary Judgment 1/10/96, Exh. "B" Spann Dep. p.9.

10. During his interview with Sullivan, Spann indicated that his salary expectations were around \$50,000.

Defendant's Motion for Summary Judgment 1/10/96, Exh. "B" Spann Dep. p.14.

11. L.H. Morgan's average starting salary for Actuarial Trainees is \$30,000.

Defendant's Motion for Summary Judgment 1/10/96, Exh. "G"; Defendant's Motion for Summary Judgment 1/10/96, Turner Aff. ¶ 4.

12. The industry-wide average starting salary for the equivalent position is \$28,500.

Defendant's Motion for Summary Judgment 1/10/96, Exh. "H".

13. During his interview with Parsons, Spann remarked that the duties of an Actuarial Trainee appeared somewhat menial and that he would expect to be promoted to Actuarial Associate within one year.

Defendant's Motion for Summary Judgment 1/10/96, Exh. "B" Spann Dep. p.18.

14. On average, entry-level candidates at L.H. Morgan spend two and one half years as Actuarial Trainees before promotion to Actuarial Associate.

Defendant's Motion for Summary Judgment 1/10/96, Exh. "E"; Defendant's Motion for Summary Judgment 1/10/96, Turner Aff. ¶ 6.

15. Spann devoted the majority of his interview with Parsons to inquiring about the Actuarial Associate position and the requirements for partnership.

Defendant's Motion for Summary Judgment 1/10/96, Parsons Aff. ¶ 6.

16. In accordance with standard interview procedures, Sullivan and Parsons met after their interviews with Spann to discuss their impressions and to fill out a written evaluation form.

Defendant's Motion for Summary Judgment 1/10/96, Sullivan Aff. ¶ 19; Defendant's Motion for Summary Judgment 1/10/96, Parsons Aff. ¶ 8.

17. Sullivan and Parsons agreed that Spann should not be extended an employment offer.

Defendant's Motion for Summary Judgment 1/10/96, Sullivan Aff. ¶ 20; Defendant's Motion for Summary Judgment 1/10/96, Parsons Aff. ¶ 8.

18. Spann's evaluation form indicates that: (1) he was late for his interview, (2) he had grossly unrealistic salary expectations, (3) he exhibited an unwillingness to "pay his dues" by performing the sometimes mundane work required of an Actuarial Trainee, and (4) he displayed poor interpersonal skills, which suggested that he might encounter difficulty working with colleagues and clients.

Defendant's Motion for Summary Judgment 1/10/96, Exh. "I".

DATED: Honolulu, Hawaii, January 10, 1996.

YOUNGER ELDRIDGE PETERSON  
& FLEMING

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ACTUARIES, INC.



followed by additional material facts and supporting evidence that plaintiff introduces to demonstrate the existence of a genuine issue of material fact.

PLAINTIFF'S RESPONSE TO DEFENDANT'S STATEMENT OF FACTS

<u>FACTS</u>	<u>EVIDENTIARY SUPPORT</u>
1. Undisputed.	<u>See</u> Defendant's Concise Statement 1/10/96.
2. Undisputed.	<u>See</u> Defendant's Concise Statement 1/10/96.
3. Undisputed.	<u>See</u> Defendant's Concise Statement 1/10/96.
4. Partially Disputed. Although Nancy Sullivan did invite plaintiff Lawrence Spann to interview with L.H. Morgan on January 24, 1995, Spann was never informed that he was only being considered for the Actuarial Trainee Program.	Plaintiff's Mem. in Opposition 1/31/96, Exh. "A" Sullivan Dep. p.9; Plaintiff's Mem. in Opposition 1/31/96, Spann Aff. ¶ 7.
5. Partially Disputed. L.H. Morgan was not actively recruiting African-American candidates for its Actuarial Trainee Program. L.H. Morgan did not hire a single African-American into its Actuarial Training Program between September 1, 1994 and August 31, 1995. During this same period, the firm hired thirty non-African-Americans into the Program.	Plaintiff's Mem. in Opposition 1/31/96, Exh. "B" Sullivan Answers to Interrogs. p.2.
6. Undisputed.	<u>See</u> Defendant's Concise Statement 1/10/96.
7. Undisputed.	<u>See</u> Defendants' Concise Statement 1/10/96.

8. Partially disputed. Plaintiff Spann arrived at L.H. Morgan's building at 9:27 a.m., but was not able to proceed to L.H. Morgan's reception area on the twenty-second floor because Sullivan had neglected to inform security that Spann was an expected visitor. By the time the security officer received Sullivan's permission to send Spann upstairs, it was 9:51 a.m. As a result, Spann did not arrive at the L.H. Morgan reception area until about 9:53 a.m.
9. Partially disputed. Spann indicated that salary was negotiable, but that given his credentials, he believed \$50,000 would be reasonable.
10. Undisputed.
11. Undisputed.
12. Partially disputed. Spann indicated to Parsons that he was confident in his abilities and would expect to advance quickly.
13. Undisputed.
14. Undisputed.
15. Undisputed.
- Plaintiff's Mem. in Opposition 1/31/96, Spann Aff. ¶ 12; Plaintiff's Mem. in Opposition 1/31/96, Exh. "C".
- Plaintiff's Mem. in Opposition 1/31/96, Exh. "H" Spann Dep. pp.14-15.
- See Defendant's Concise Statement 1/10/96.
- See Defendant's Concise Statement 1/10/96.
- Plaintiff's Mem. in Opposition 1/31/96, Exh. "D" Defendant's Response to Request for Admissions at 4; Plaintiff's Mem. in Opposition 1/31/96, Spann Aff. ¶ 27.
- See Defendant's Concise Statement 1/10/96.
- See Defendant's Concise Statement 1/10/96.
- See Defendant's Concise Statement 1/10/96.

16. Undisputed

See Defendant's  
Concise Statement  
1/10/96.

17. Undisputed.

See Defendant's  
Concise Statement  
1/10/96.

Plaintiff also contends that the following additional material facts are relevant or in dispute.

**PLAINTIFF'S STATEMENT OF FACTS IN OPPOSITION**

18. Plaintiff Spann is a 1994 magna cum laude graduate of the Wharton School of Business, where he obtained a Bachelor of Science degree in Economics with a major in actuarial science and accounting.

Plaintiff's Mem. in  
Opposition 1/31/96,  
Exh. "E".

19. In the course of his studies at the University of Pennsylvania, Spann maintained a 4.0 average in his seven accounting classes and was awarded numerous academic prizes and citations.

Plaintiff's Mem. in  
Opposition 1/31/96,  
Spann Aff. ¶ 2-3;  
Plaintiff's Mem. in  
Opposition 1/31/96,  
Exh. "F".

20. At the time of his application to L.H. Morgan, Spann had passed seven of the examinations administered by the American Society of Actuaries, making him an Associate Member of the Society.

Plaintiff's Mem. in  
Opposition 1/31/96,  
Spann Aff. ¶ 4;  
Plaintiff's Mem. in  
Opposition 1/31/96,  
Exh. "F".

21. When Spann mentioned to Sullivan that he thought \$50,000 would be a fair salary, Sullivan told Spann that such a salary was on the high side, but not necessarily "out of the ballpark."

Plaintiff's Mem. in  
Opposition 1/31/96,  
Spann Aff. ¶ 10.

22. When Spann expressed interest in the Actuarial Associate position and in the requirements for partnership, Parsons remarked that Spann might "be getting a little ahead of himself" to be thinking about such positions.

Plaintiff's Mem. in  
Opposition 1/31/96,  
Spann Aff. ¶ 17.

23. Of the thirty individuals hired into the Actuarial Trainee Program between September 1, 1994 and August 31, 1995, twenty-seven had grade point averages that were lower than Spann's and none had passed as many of the exams administered by the American Society of Actuaries.

Plaintiff's Mem. in Opposition 1/31/96, Exh. "G" Sullivan Answers to Interrogs. pp.7-9.

DATED: Honolulu, Hawaii, January 31, 1996.

AIKEN NOLAN HENDERSON  
& WRIGHT

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